



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**
Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

DHCD Section 8 Administrative Plan Amendment: 2005-03

**Programs: Project Based Assistance (PBA)
Effective Date: June 1, 2005**

Purpose: This amendment adds a new section to DHCD's Section 8 Administrative Plan for the purpose of establishing policies and procedures for DHCD's project-based assistance (PBA) program.

Insert the following Section 31, Project-Based Voucher Assistance.

31 Project-Based Voucher Assistance

All regulatory references are to those currently in effect for the Section 8 Project-Based Voucher Program, hereafter referred to as the Project-Based Assistance (PBA) program, as they may be amended. Except as expressly provided herein, all of the provisions of the Department of Housing and Community Development's (DHCD) Administrative Plan for the Section 8 Housing Choice Voucher Program (HCVP), apply to the Section 8 PBA program.

31.1 Program Overview

The PBA Program has two separate operating platforms, one for the pre-October 1, 2000, PBA projects that have been or will be extended under the terms and conditions of their initial Housing Assistance Payments (HAP) contract (hereafter referred to as the Old PBA); and those that initially entered HAP contract subsequent to the issuance of the Initial HUD Guidance dated January 16, 2001 (hereafter referred to as PBA). The initial guidance implemented some of the statutory changes made in the US Department of Housing and Urban Development (HUD) Appropriations Act for federal fiscal year 2001. Final regulations are scheduled to be published by HUD in July 2005.

There are four major differences between the Old PBA and PBA

Old PBA (Initial HAP contract executed prior to 1/16/2001)	PBA (Initial HAP contract executed on or after 1/16/2001)
May have subsidy attached to 100% of the units in a building.	Cannot exceed 25% of the units in a building unless the units are targeted to elderly or disabled persons or will have support services provided. HUD waiver required for services.
Project sponsor may select own program eligible tenants after a 30 day vacancy.	All vacancies must be filled with applicants referred by the RAA.
Rental assistance is only provided while the family resides in the assisted unit. If family vacates the unit the subsidy stays with the unit and the new tenant family receives the benefit. The family that vacates the assisted unit must apply to the HCVP list for tenant-based assistance.	After being a tenant in good standing for one year, a family may request a tenant-based voucher and move with assistance if the RAA has funding available. The unit continues to be assisted for the next eligible tenant family that is selected from the waiting list.
Annual rent adjustments are limited by the HUD-published (Annual Adjustment Factors, AAFs) and rent reasonableness.	Annual rent adjustments are limited only by the published FMRs and rent reasonableness. See Section 31.9

The regulations at 24 CFR 982 governing the HCVP program are applicable to the PBA program with the exception of the tenant rent portion. Tenants assisted in a PBA unit pay the highest of 30% of adjusted monthly income, 10% of gross monthly income, or the DHCD established minimum rent toward the gross rent for the unit.

The PBA has two components. New Construction/ Rehabilitation (hereafter referred to as Development PBA) and Existing PBA.

31.2 Eligible Projects

- Eligible projects will be selected in response to criteria established and published in a Notice of Funding Availability (NOFA).
- Projects must not be listed in HUDs prohibited building types at 24 CFR 983.7
- Projects must not require any permanent relocation of in-place tenants
- All units must pass HQS inspections with a Grade B+ or better condition as described in Section 16.13 of the HCVP Administrative Plan.
- All units must be located in a census tract with a less than 20% poverty rate or receive a regulatory waiver from HUD.

With the exception of single-family homes, defined by HUD as buildings with one to four units, not more than 25% of the units in a building may have PBA attached to them. HUD permits exceeding the 25% cap on the number of units to be assisted if elderly or disabled households will reside in the units that exceed the cap. It is also possible to be granted a HUD waiver of the 25% cap if the households in the units that exceed the cap will receive supportive services

If HUD waivers are required in order for the project to be eligible for selection, the project owner must submit a written request for the waiver to DHCD and include all supporting documentation required by HUD to make a determination.

Currently, it is a HUD requirement that any units that were/will be developed using Low Income Housing Tax Credits, (LIHTC) or tax exempt bonds issued by a state agency or its designee, are subject to a HUD-performed subsidy layering review (SLR) prior to executing either an Agreement to enter a Housing Assistance Payments (AHAP) contract for development projects or a Housing Assistance Payments (HAP) contract for existing projects.

The project must be managed and maintained by an experienced entity that is in good standing with HUD and either have experience acceptable to DHCD or be able to provide two references acceptable to the RAA.

31.3 Existing PBA

During publicly posted open application periods, the RAAs or DHCD will accept applications for Existing PBA units. Existing PBA will only be attached to eligible buildings as referenced above in section 31.2.

A complete PBA owner application must include:

- The owner completed Existing PBA Application Form.
- A rent appraisal performed by a state certified appraiser.
- For buildings constructed prior to January 1, 1978, a Letter of Compliance (LOC) with the state lead law.
- For buildings constructed after January 1, 1978, a copy of the building permit or initial occupancy permit.
- The owner's written tenant selection plan.
- Where applicable, a completed SLR notice from HUD.

Due to the time and expense involved for the owner, the RAA will not require either the SLR material or the rent appraisal be submitted until the owner application has been preliminarily approved by the RAA or DHCD.

As part of the application review process the RAA will:

- Conduct an HQS compliance inspection of each unit to be assisted to insure that not more than \$1,000 of investment per unit is needed to meet HQS.
- Verify the program eligibility of in-place tenants.
- Verify that in-place tenants are appropriately housed for the household composition and size in compliance with DHCD subsidy standards.
- Review and approve the owner's proposed tenant selection plan to insure it is reasonable for the population it intends to serve and that it contains no prohibited screening criteria.
- Notify owners of the requirement to have initial HAP rents established by a state-certified appraiser.
- Notify owners of projects that were developed using LIHTC or tax-exempt bonds issued by a state agency or its designee that a subsidy layering review package must be submitted to DHCD for review by HUD.

When the RAA is satisfied that the owner application is complete and approvable, it will forward it to DHCD for approval to proceed to HAP contract. If there is no subsidy layering review requirement, DHCD will send a written approval to proceed to HAP contract to the RAA.

31.3.1 Owner Applications Accepted Directly by DHCD

When DHCD accepts the owner application directly it will grant preliminary approval subject to the RAA completing the above-referenced application review process. If there is no SLR requirement, when DHCD is notified by the RAA that these requirements have been met, it will issue written approval to the RAA to execute the HAP contract.

If there are LIHTC or state agency issued tax exempt bonds in the building, DHCD will notify the owner of the requirement to submit a SLR package to DHCD for submittal to HUD. After HUD completes its review and notifies DHCD of its decision, the RAA will receive written notification from DHCD on whether it may proceed to HAP contract.

31.4 Development PBA

The Development PBA is reserved for projects where there is a minimum of \$1000 of owner investment per unit necessary to bring the units up to HUD and additional DHCD Housing Quality Standards (HQS) with an inspection grade of B+ or better. Development PBA projects are selected either through the competitive One Stop Affordable Housing Funding Rounds conducted by the DHCD Division of Housing Development (DHD), or various MassHousing programs including the Affordable Housing Trust Fund (AHTF) rolling awards. The rating and ranking selection criteria for these PBA awards are set out in the applicable development competitions and the PBA is awarded to successful developers who request them as part of these respective application processes.

When the Bureau of Federal Rental Assistance (BFRA) is notified, via an Internal Memo from the DHD or the AHTF, that an applicant that requested PBA has been selected for funding, the BFRA will issue a Reservation of PBA Letter to the owner. Prior to start of construction, the owner must enter into an Agreement to enter a Housing Assistance Payments (AHAP) contract with the appropriate RAA. There can be no construction work started on the project prior to execution of the AHAP.

Immediately upon receiving the RAA copy of the PBA reservation letter, the RAA is encouraged to contact the owner to discuss the next steps towards executing the AHAP. DHCD recommends setting up a meeting with the principals; owner, developer, general contractor, development consultant etc. to introduce the staff person who will be the Contract Administrator (CA) and inform all parties of the contractual obligations. If requested by the RAA, DHCD will attempt to be available to attend this meeting. If all requirements for entering AHAP have been met (see Section 31.5) and HUD has given DHCD permission to enter AHAP prior to the meeting, the RAA and Owner may elect to execute the AHAP at this time. After the AHAP is executed, the construction may begin.

31.5 Requirements Prior to Entering AHAP

- All required waiver requests have been approved by HUD.
- If applicable, a SLR has been reviewed and accepted by HUD.
- The RAA has determined that at least \$1,000 of investment per unit is required to bring the units into compliance with HQS.
- The owner has submitted an appraisal conducted by a state-certified appraiser to determine the unit rents.
- An Environmental Review clearance form and a copy of the published Request to Release Funds notice are in the RAA file (generally completed by the city or town where the project is located).
- The RAA has determined, based on the owner provided work write-up that planned work will result in the units meeting HQS and be acceptable for HAP.
- The RAA has confirmed by site-inspection that no construction has begun on the project (this includes planned demolition).
- Where applicable, the architect has provided written certification that the planned new construction will be done in compliance with all local codes and ordinances and will, when completed, be in compliance with HQS.
- If applicable, the owner has certified that in-place tenants are Section 8 eligible, or if not, that they will not be permanently relocated in order to qualify their unit for assistance.
- The owner, and other principals if possible, has been informed by the RAA of the Section 3 (Part 11 of the AHAP) requirements for developing a federally assisted project.

- All the applicable Exhibits have been completed and attached to the AHAP form.
- In accordance with 24 CFR 983.52© HUD must approve the selected project for AHAP.

31.6 AHAP

The AHAP has not yet been updated by HUD and the Part 1, Form HUD 52531-A, dated 4/90 and Part 11, Form HUD-52531-B, dated 12/88 remain in effect as of the effective date of this Plan. The RAA will assign a contract number to the AHAP which will be the same number used for the HAP contract. The AHAP will contain all the pre-conditions that must be met by the owner prior to execution of the HAP contract. The effective date of the AHAP may either be the date of execution or a subsequent date. Under no circumstances may the effective date precede the AHAP execution date. Other significant dates:

- Date for commencement of work, must be on or after the AHAP effective date and be a realistic date based on known possible delays.
- Time for completion of work should be based on estimated completion date, with possibly some cushion for unforeseeable delays. The RAA, with DHCD approval, may extend the completion date if all work is not completed by the date indicated under extenuating conditions.

31.6.1 Contents of the AHAP

- Exhibit A- In place of the owner's application, the RAA will include a copy of the PBA reservation letter and the Internal Memo from either DHCD's DHD or MassHousing with a Memo to File stating that the complete application is available for viewing at the office of either DHCD or MassHousing, whichever was the selecting agency, during normal business hours.
- Exhibit B- The RAA will include the owner's narrative description of the work to be completed that contains a certification that there is a minimum of \$1,000 per unit of work being done in the project. A Memo to File stating that the work write up for rehabilitation, or if new construction, the specifications and plans may be viewed at the office of either DHCD or MassHousing, whichever was the selecting agency.
- Exhibit C- This is prepared by the RAA and includes the AHAP contract number, the project address and the number of units by bedroom distribution and maximum initial gross rents. These rents must be determined by a state

certified rent appraiser but cannot exceed the applicable APS or HUD-approved Exception Rent (ER).

- Exhibit D- A copy of the Housing Assistance Payments (HAP) contract, Form HUD-52530-A, that will be executed when the units are complete and accepted by the RAA; completed as to owner and RAA name, contract number, (the same one used for the AHAP) and Exhibit B of the HAP contract which lists the services, maintenance and utilities to be provided by the owner.
- Exhibit E- If the work is to be completed in stages, and brought under HAP in stages, this exhibit should indicate, by unit number, when each stage will be completed and ready for HAP.
- Exhibit F- The architect's certification as explained in the AHAP.
- Exhibit G- If PBA will be attached to nine or more units in the project the Davis-Bacon (D-B) Wage Rate Schedule, available online at <http://www.access.gpo.gov/davisbacon> will be exhibit G.

All exhibits must include the project name and address as well as the contract number in addition to the exhibit letter on each page.

All construction must be completed within the time specified in the AHAP. When all work has been completed and the units pass the HQS inspection and are accepted by the RAA, the owner and the RAA will execute the HAP contract. The HAP can contain an option to renew after the initial term subject to funding availability.

With the exception of Davis-Bacon requirements, monitoring of Section 3 compliance is mostly a matter of informing the owner of the contractual obligations contained in Part 2 of the AHAP and, where applicable, keeping a copy of owner certifications of compliance in the project file.

31.7 Davis-Bacon

Projects that will have nine or more units assisted with PBA are subject to Davis-Bacon (D-B) prevailing wage provisions for PBA. Even if there is HOME money in a project and it would ordinarily not be subject to D-B until 12 or more units are receiving assistance, the PBA award will require D-B compliance at nine units. The General Contractor (GC) is responsible for compliance with D-B for all employees on the site.

If Davis-Bacon or other Section 3 requirements (Part 11 of the AHAP) apply to the project, the owner is responsible for insuring that the appropriate language is contained in the construction contract(s). If another entity has not been identified by either DHCD's DHD or MassHousing to monitor Section 3 compliance, it is the

responsibility of the administering RAA to monitor it. The RAA may request DHCD assistance in meeting this obligation.

Monitoring D-B consists of downloading the current wage and fringe benefit rates from the above-referenced web address for all trades people and apprentices who will be employed by the GC, and all subcontractors, and establishing a D-B enforcement file. Each week the GC is responsible for submitting to the RAA CA a certified wage report, preferably on Form WH-347. All the wage reports and any other documents pertinent to the D-B compliance must be kept in the D-B enforcement file.

In the event that a complaint of non-compliance with D-B is lodged with the HUD Labor Relations Office (LRO), it will request a complete copy of the enforcement file as part of its investigation, so it is important that this file always be kept current. Should the CA interviews with employees indicate a possible problem with reported versus actual wages paid, the CA must first bring this to the attention of the GC in writing. If the apparent discrepancy is not resolved to the satisfaction of the CA then the CA must report it in writing to the LRO, with a copy to DHCD. A copy of the discrepancy letter mailed to the GC, along with a copy of any response, must accompany the report.

The LRO does not require that the GC use form WH-347, provided that all the same information is included on the GC's own form. If the GC elects not to use WH-347, which has the certification language on the back, then the GC must either use the Payroll Certification form WH-348, or attach to the payroll report a copy of the back of WH-347 or use the exact word for word language that it contains to certify the payroll separately. (Forms are available at www.hudclips.org/subscriber/html/forms.htm)

The payroll report(s) must list all employees, both those directly employed by the GC and all those working for subcontractors. If form WH-347 is not used by the GC, the format used must contain all the information listed on that form. These reports should be numbered sequentially starting with number One (1) for the first week of construction and continuing each week until the project is completed and accepted for HAP by the RAA. This sequential numbering relieves the GC of the responsibility to submit a "no work" payroll for any period of temporary work stoppage.

At the start of construction the CA must visit the site and insure that the poster- Notice to Employees -(form WH-1321) and the-Project Wage Rate Sheet- are prominently displayed in a place where all employees are likely to see them and where they are protected from the elements. The CA should interview a representative number of employees of each contractor on-site at this initial visit using form HUD-11 to confirm wage rates, fringe benefits and overtime over 40 hours

At the start of construction the CA must send a notice of the start to HUD's LRO. Periodically during the course of the construction, the CA should visit the site to monitor that the work is being done in a manner that will insure compliance with HQS and to interview some employees to insure that they are receiving the amounts shown

on the certified weekly payroll(s). Again, the RAA should feel free to request DHCD assistance with these tasks.

31.8 HAP Contract

The owners of either Development or Existing PBA projects must execute a HAP contract with the RAA to initiate subsidy payments. The HAP contract may be executed for a term of from two to ten years at the owner's request and RAA discretion. The RAA may insert a clause requiring the owner to renew the HAP contract for an additional term at the expiration of the contract. Alternatively, the owner may provide a written declaration of willingness to renew the HAP for an additional term. Under no circumstances may an assisted lease be made effective or subsidy payments begin prior to the effective date of the HAP contract.

If an in-place household that was represented to the RAA as being program eligible and appropriately housed should subsequently fail to be certified as such by the RAA, that unit will be suspended from the HAP contract until such time as it becomes eligibly occupied. At that time, during the term of the HAP contract and if funds are available, the RAA may reinstate the affected unit upon request by the owner and RAA verification of program eligibility of the current in-place tenant or a family referred from the RAA waiting list.

31.9 Initial HAP Contract Rents

All Development and Existing PBA initial gross rents must be established by a state-certified rent appraiser and be within the Applicable Payment Standard (APS) for the type of project and the community. The gross rent is the contract rent plus allowances for tenant-paid utilities. The APS may vary by community and type of funding used in the project development. At all times the approved rents must be rent reasonable for the size, location, and condition of the unit. All Development gross rents are based on the FMR or HUD approved Exception Rent (ER) in effect at the effective date of the AHAP. Within these constraints, the RAA may set the maximum APS as follow:

1. All Existing PBA units 110% of published FMR or the HUD-approved ER.
2. All Development PBA 110% of the FMR or the ER in effect at the effective date of the AHAP.
3. Development PBA with LIHTC *outside* of a Qualified Census Tract (QCT), up to the market rate rents in the same or another comparable LIHTC project even if above the APS for the community.
4. Development PBA with LIHTC *inside* of a QCT, the lower of 110% of the AHAP FMR or ER or the rent for a comparable unassisted unit. Inside of a QCT the LIHTC market units may not be used for comparables.

5. Development PBA with Low Rent HOME units may be up to 110% of the AHAP FMR or the ER.
6. Development PBA with High HOME Rents must use the HUD established high HOME Rent.

Please Note: The HUD proposed regulations published for comment on May 18, 2004 eliminated PHA authority to set different payment standards for its tenant-based and PBA units. If published as final, this may reduce the maximum rent levels stated above.

31.10 Lease Effective Date

No lease may be effective prior to the HAP effective date. With the exception of in-place tenants, no units may be filled by the owner prior to authorization from the RAA. Selected tenants will enter into a lease with the owner effective on the move-in date for new tenants and on the RAA eligibility certification date, or the HAP effective date, whichever is later, for in-place tenants.

31.11 Initial and Ongoing HQS Compliance

The RAA will inspect each PBA unit prior to executing the HAP contract and at tenant turnover before approving the unit for the new tenant. Additionally, each year at the HAP anniversary date a representative number of units by bedroom size, for a minimum of 25% of the total PBA units rounded up, must be inspected for continued HQS compliance at the DHCD inspection grade of B+ or A. Failure to consistently maintain PBA units in a minimum of B+ inspection grade condition may be ground for unit/project HAP termination.

31.12 Annual Rent Adjustments

31.12.1 Old PBA

Old PBA rent adjustments are capped by the effective AAF during the course of the five year term and subject to the RAA conducting a rent reasonableness test. When extending an Old PBA HAP contract under the same terms and conditions as the initial HAP contract, the initial extended gross rent must again be established by a state-certified rent appraiser if the owner is requesting an increase greater than the AAF would allow. This should always be recommended to owners who request to extend an Old PBA contract because it is only at the initial rent of a contract term that an owner has the opportunity for a gross rental amount established by the appraiser up to 110% of the FMR or the ER. All subsequent anniversary rent adjustments for Old PBA are capped by the AAF.

31.12.2 PBA

The RAA must perform a rent reasonableness test on all contracted units at least once annually, generally at the HAP anniversary date, and at other times as required by the federal regulations, such as when there is a 5% or greater reduction in the HUD published FMR.

The contract rent may be adjusted up or down as indicated by the results of the rent reasonableness test. This requirement means that there may be occasions when a PBA rent must be reduced because of verified decreases in rent levels for comparable unassisted units in the PBA community.

31.12.2.1 Rent Increases

Each year at the HAP contract anniversary date, the owner may be granted a rent adjustment up to the above limits based on the published FMR or current ER

The owner must request the increase in writing at least 60 days prior to the HAP contract anniversary date. If the request is made less than 60 days prior to the HAP anniversary date, it may delay the effective date of the RAA approved rent adjustment. Adjustments may not be applied retroactively. Requests from owners received after the HAP anniversary date will, if approved by the RAA, be effective on the first of the month following the date the request is received by the RAA. A late rent adjustment request will not adversely affect the dates of future adjustments.

31.12.2.2 Rent Decreases

If the annual rent reasonableness test indicates that rents have decreased since the last annual test, the RAA must reduce the contract rents to owner. Rent reductions are not dependent upon a written request for a rent adjustment from the owner but are based solely on the results of the rent reasonableness test. An owner may provide a rent appraisal, conducted by a state-certified appraiser, to refute the RAAs determination of lower rents. The RAA must complete the rent reasonableness test not less than 60 days prior to the HAP contract anniversary date in order to provide the owner with sufficient notice of its intent to reduce the rents.

31.13 Vacancy Payments During the Term of the PBA HAP Contract

Old PBA projects are not eligible to receive vacancy payments.

PBA

There is no initial vacancy payment for units not filled at the effective date of the HAP contract. The owner is responsible for notifying the RAA of pending vacancies immediately upon receiving notice from a tenant of intent to vacate the unit. In the event of a vacancy that occurs without notice to the owner, the owner must notify the RAA immediately upon learning of the vacancy, but in any event, not later than the first missed rent payment by the tenant family. Provided that the owner has taken all steps necessary to prevent vacancy loss from occurring, including keeping the unit compliant with HQS, up to 60 days of vacancy payments may be paid if a unit remains vacant for that length of time or longer. The purpose of the vacancy payments is to not unduly penalize the owner during the tenant eligibility certification. Requests for vacancy payments must be made in writing within 15 days of the initial vacancy or immediately upon the owner becoming aware of a non-scheduled vacancy. The RAA will consider the frequency and scope of requests for such payments in its decision whether to renew an expiring HAP contract.

An owner is not entitled to vacancy payments unless the unit is HQS compliant and in a rentable condition. If the non-compliance is tenant-caused damages a 30 day vacancy payment is permitted for purposes of giving the owner a sufficient period to repair the damages. If a new tenant is not identified during the repair period, through no fault of the owner, an additional 30 days of vacancy loss may be paid for a total of 60 days. If referrals are not promptly requested by the owner, or applicants screened promptly upon responding to a referral, the owner will not be eligible to receive the full 60 day vacancy payment. In these instances, either late notice of pending or actual vacancy or other than tenant-caused non-compliance of the unit, the RAA may prorate the vacancy payment based on the eligible period of vacancy.

31.14 Termination of the HAP Contract

During the term of the HAP contract, the RAA may terminate the entire contract for material breach of the contract by the owner, or reduce the number of units under the contract if a household becomes ineligible or is terminated from the program and the owner does not move to evict. The HAP may also be terminated or reduced if there is a vacancy in excess of 60 days that is not the result of PBA program requirements but instead is the result of owner action or inaction.

If there is high turnover, e.g. more than 25% of tenants choose to opt out at the end of the first year of tenancy, it may indicate less than desirable units and the RAA may require the owner to provide an action plan to decrease the turnover. If turnover remains high,

whether it is at the end of the initial year or over time, the RAA may choose to terminate the HAP contract after discussion with DHCD. SRO units will not necessarily be subject to HAP termination for excessive turnover at the end of the first year of tenancy. However, DHCD, the RAA, and the owner should meet to determine if this pattern is likely to continue with new tenants. In such case DHCD may choose to terminate the HAP contract.

31.15 Eligibility Criteria

31.15.1 Residency Preference

A regional residency preference will be applied as a ranking preference to all applicants. Applicants may apply to units outside of their region, but they will not be selected until all applicants with a residency preference have been exhausted.

31.15.2 Elimination of Singles Preference for SRO Units

Due to the difficulties inherent in maintaining occupancy in SRO units, DHCD will permit the admission of single person households that are not elderly or disabled for these units provided all other eligibility criteria are met. However, the elimination of the single's preference does not apply to full time students.

31.15.2.1 Student Status

An SRO PBA unit may be occupied by a student who is also receiving assistance under title IV of the Social Security Act, or enrolled in a job training program receiving assistance under the Job Training Partnership Act, or under other similar Federal, State, or local laws.

An SRO PBA unit may not be occupied by a full time student except as described above.

A full time student is defined by the IRS as taking 12 credit hours a semester or attending school full-time 5 months per year at an educational institution with regular facilities, other than a correspondence or night school.

Student status is to be monitored on a tax year basis; thus an applicant would not be eligible if the person had been a full-time student for 5 months of the calendar year, even if they had graduated prior to applying for a PBA unit. RAAs should adjust tenant certification procedures to consider student status according to this interpretation.

31.15.3 Need for Services

Applicants for PBA units where services are provided must demonstrate a need for the specific services provided; however, acceptance of such services will not be a selection requirement.

31.15.4 In-place tenants

A tenant in-place as of the date of project selection will receive the benefit of the PBA assistance under the HAP contract if they meet the HCVP program eligibility criteria and are certified by the RAA as such prior to being offered a unit.

31.16 Outreach and Referrals

All applicants on the HCVP waiting list will be notified of the opportunity to apply for the PBA units. New applicants receive this information by notification on the HCVP Pre-Application form. Current participants seeking to relocate will also be notified of any PBA opportunities. At any time the RAA may perform outreach to homeless shelters, service providers, the owners/developers and other appropriate fair housing venues. Owners may refer potential applicants to the RAA waiting list at any time.

31.17 Requirement for Owner Tenant Selection Plan

Owners of PBA units are required to prepare a written tenant selection plan which includes but is not limited to:

- A statement that the owner will return a copy of the referred list of names showing the date and time that each applicant contacted the owner and the final status of the contact.
- The owners screening criteria and methods used to screen.
- If a credit check will be part of the screening, the owner must include the minimum acceptable score.
- A statement that all those applicants that pass the owner screening will be referred back to the RAA as potentially acceptable tenants.
- A statement that denials will be in writing to the applicant listing the reason(s) for the denial with a copy to the RAA.

The RAA must review and approve this plan prior to executing the HAP contract. The RAA must ensure that the owners tenant selection plan is appropriate to the population served. For example, it is unrealistic to require that a chronically homeless population pass a stringent credit check.

Existing PBA

The tenant selection plan must be submitted by the owner at the time of application.

Development PBA

The tenant selection plan must be submitted and approved prior to owner's request for a list of referrals from the RAA. Referrals should begin approximately 60 days before the units are ready to come on-line.

31.18 Waiting List Management

Each RAA will maintain site-based waiting lists for its PBA units that function in tandem with DHCD's statewide waiting list. Applicants will self-select which site waiting lists(s) they wish to be listed on. Applicants will be placed on the PBA waiting lists by the date and time the application is received. Applicants for PBA units that are not on the HCVP waiting list will be automatically listed on the HCVP waiting list. If the applicant's household composition is not appropriate for the selected project, the RAA will not place the applicant on that project's waiting list.

31.19 Tenant Selection

31.19.1 Old PBA

Owners of Old PBA projects retain the right to fill vacancies after 30 days with an eligible family of their own selection without regard to the RAA waiting list.

31.19.2 PBA

Tenants for the vacant PBA units will be selected by the owner from referrals from the RAA waiting list. For development projects the owner must request referrals at least sixty days prior to the anticipated HAP effective date to begin tenant selection. For Existing projects, the list of referrals will be sent to the owner by the RAA when it receives the approval to proceed to HAP contract form from DHCD. All referrals must be from the RAA waiting list.

Provided that the owner selects from the list of referrals provided by the RAA in accordance with its written tenant selection plan, the owner does not have to screen the referrals in order of placement on the RAA waiting list, but may do so in the order of contact by those referred. Because owner screening typically takes much less time than RAA eligibility screening, the RAA should perform program eligibility certification after the referrals have passed the owner screening.

The RAA must clearly outline the admissions process in the selection letter that is sent to the applicant. If referrals are made to the owner without the RAA first determining eligibility, both the owners and the applicants must be notified in writing by the RAA that among those who pass the owner screening, the first applicant that contacted the owner and passed the owner tenant screening who is determined eligible by the RAA with all third-party documentation in hand, will be offered the unit.

If an owner denies a unit to a referred applicant, it must be in writing and the reason(s) for denial clearly stated. The owner must provide a copy of this to the RAA. The letter

must advise that the applicant has the right to have the RAA review the denial for compliance with the owner's tenant selection plan.

All applicants selected to occupy the PBA units, whether in-place or from the waiting list, must be briefed on program benefits and responsibilities.

Rejection by an applicant of the highest housing type in the project for which they are eligible will result in removal of the applicant's name from that project's waiting list. For instance, an applicant that refuses a one-bedroom unit in a project will not be referred to a smaller unit in that same project.

31.20 Appeals

The RAA is responsible for defending its decisions pertaining to the applicant's eligibility for PBA assistance. Section 8 appeal procedures will be utilized and shall be the same as currently in effect for the Housing Choice Voucher Program, as set forth in Section 9. The RAA must review owner denials for admission if requested by the applicant.

31.21 Under, Over and Inappropriately-Housed Participants

31.21.1 Under-Housed

Should a change in family size or composition cause a family to become under-housed to the point of causing the unit to be non-compliant with HQS space requirements and there is either an available appropriately sized PBA unit or a tenant-based voucher available for the family, it must relocate with assistance or be terminated from the program. If there is no voucher available to issue to the family, or an available comparable PBA unit to which the family may relocate, the family will remain in place without penalty to the owner until the family can relocate with assistance.

If a request from the family to add another member that is not by birth or court-order would cause the family to breach HQS space requirements, such request must be denied by the owner and the RAA. If such family has been in good standing for at least one year at the time of the request to add a member, then the request may be approved if the RAA has a voucher to issue to the family or there is an available PBA unit of appropriate size for the new family composition.

31.21.2 Over-Housed

After the first year of tenancy, if a family becomes over-housed due to a change of family size or composition, the family must be encouraged to relocate to a smaller PBA unit or

accept a voucher to relocate. If there is no appropriately sized comparable PBA unit or voucher available for the family, it may remain in place with no reduction in the APS until such time as there is a voucher or unit available for the family to relocate with assistance. If the family has failed to move with assistance by the expiration of the HAP contract, that unit may not be included in any HAP renewal or extension.

31.21.3 Inappropriately-Housed in an Accessible Unit

The RAA must utilize a lease addendum that requires an inappropriately housed family to move from an accessible unit when a family that needs the accessibility features is identified for the unit.

In order to minimize loss of income to a project, an accessible unit may be leased to a family that does not require the special features if it has been vacant for 60 days or more and the RAA has exhausted its waiting list. Such a family is inappropriately housed and is required to sign the lease addendum agreeing to move from the unit when a family that needs the accessibility features is identified for the unit. If there is a suitable PBA unit available within the project, the inappropriately housed family must move to that unit. If there is no PBA unit available, the RAA will issue an available tenant-based voucher to the family. When the voucher expires, the family must be terminated from the PBA program even if it has failed to use the voucher to relocate with assistance. If there is no unit or voucher available, the family will remain in the accessible PBA without penalty until such time as one or the other becomes available to the family.

31.22 Moving With Assistance (Opt-Out)

At the end of one full year of assisted tenancy in a PBA unit, a participant in good standing may request a tenant-based HCVP voucher and move to a unit of their choice with continued assistance. If the RAA does not have an available voucher the tenant may request placement on the PBA “opt out” waiting list. The participant may not be placed on this list until they have been in the unit for a full year as a tenant in good standing. When a voucher becomes available, names will be selected from this list in chronological order, after any inappropriately- under- or over-housed families respectively have been offered the opportunity to move with assistance.

Should the voucher become available during a lease term, it is anticipated that the owner will agree to a mutual termination of the lease. Owners must have good reason to deny such mutual termination. Because the RAA is not a party to the lease, it may not give the family permission to break the lease; however, it may choose not to penalize such behavior for extenuating reasons.

31.22.1 Term of Opt-Out Voucher

PBA participants that request a tenant-based voucher to relocate, (opt-out) will be issued an available voucher for a 60 day term. At expiration of the voucher term, if the family has not located a program eligible unit to which it can relocate with assistance, it must wait a full year before requesting a tenant-based voucher again. Because of the burdensome requirements for filling PBA units and the need for an owner to have some control over vacancy loss, the opt-out voucher will not be extended beyond 60 days except for reasonable accommodation or mitigating circumstances acceptable to the RAA.

31.23 Termination of Assistance

If a tenant family is terminated by the RAA for program violations during the term of the HAP contract, both the owner and participant family will be notified by letter that assistance will be terminated effective one calendar month from the date of the notice. DHCD tenant-based HCVP program termination appeal procedures apply to tenants of PBA units. In the event the termination is upheld but the tenant remains in place, the subsidy may be moved to another vacant unit of the same size and quality in the same project (with no increase in the total number of units to be assisted) if requested by the owner. If no eligible unit is available, or if the owner does not request a unit replacement, the HAP must be reduced by that one unit until such time as the unit becomes vacant and available to another applicant family during the term of the HAP contract. Ineligibly occupied units will not be included in any HAP contract extension or renewal.

Families that become ineligible through no fault of the family, such as when an increase in household income results in 30% of its adjusted monthly income being equal to or greater than the gross rent for the unit, may remain in the unit paying the full rental amount. A family may remain in place and pay the full rental amount without assistance indefinitely. In such instances the unit will remain under HAP at zero subsidy for six months. At the end of the six months, the owner may request that another comparable vacant unit in the same project replace the one occupied by the zero subsidy family under the HAP contract. If no such request by owner, the HAP contract will be reduced by one unit. The subsidy will be made available to the next family on the HCVP waiting list if DHCD has available funding. If, during the six months of zero subsidy, the owner has cause for and chooses to pursue eviction; the unit will remain under HAP contract with zero subsidy until the final disposition by the housing court.

31.24 HAP Contract Renewal

If there has been a change in ownership since the expiring term began, and the new owner is less qualified in managing and maintaining a PBA project, the RAA may choose not to renew the HAP contract.

31.24.1 Old PBA

Old PBA may be extended at the discretion of the PHA, upon request from the owner, under the same terms and conditions as the initial HAP contract.

31.24.2 PBA

The RAA must consider several factors in its decision whether to renew an expiring HAP contract, including but not limited to:

- Owner compliance with HQS and maintenance of the B+ inspection grade
- Rate of tenant turnover. A high rate (more than 25% annually), may indicate tenant dissatisfaction with the unit or owner.
- Owner timely reporting of vacancies so as to minimize the number of vacancy claims filed.
- Frequency and length of unit vacancies.
- Ease of re-leasing units at turnover.
- Owner's overall compliance with the HAP contract provisions.

This list is to illustrate some possible factors in deciding whether to renew an expiring HAP contract and is not intended to list every factor that may be used by the RAA in its decision whether to renew.

If there is a high turnover or requests to opt out, more than 25% annually rounded down, the RAA must seek DHCD input on a renewal decision. Additionally, if there is generally a delay in reporting vacancies or in selecting new tenants, such that vacancy loss payments are the norm at turnover, then discussion with DHCD is required prior to the RAA agreeing to renew the HAP contract. In the absence of these possible reasons for non-renewal, the RAA has only to notify DHCD in writing at the time the request to renew is made by owner or the RAA is acting on an owner agreement to renew that was made at the time of owner application to attach PBA subsidy to the units.

An over-housed family's unit may not be included in the renewal and that family must be issued a voucher at least 120 days prior to the HAP expiration date. If the family fails to use the voucher during its initial and any extended term, the voucher will expire, the unit will not be included in the renewal and the family will be responsible for the full gross rent of the unit.

31.25 Timing of Renewal Process

Not less than four months before the end of the contract term, the RAA and owner may elect to renew the HAP contract for an additional term as permitted by regulation. Only those units eligibly occupied or in the process of being marketed to a new tenant may be included in a renewal contract.

When the owner request to renew the HAP contract is received by the RAA, or the RAA is choosing to renew for an extended term based on the owner's agreeing to such at the initial HAP date, all the units must be scheduled for an HQS compliance inspection.

The RAA must complete a rent reasonableness test for the building by unit size and notify the owner if a new certified rent appraisal will be required for setting the gross rents.

31.26 HAP Renewal Gross Rents

In the absence of different regulations or guidance from HUD, the renewal gross rents must be established by a state certified rent appraiser unless the RAA conducted rent reasonableness test indicates that the requested gross rents are not more than the average of the three comparables used in the rent reasonableness test.

An owner may elect to have the rents established by a state-certified rent appraiser provided that such rents do not exceed the maximum gross rents permitted by HUD for the program.

31.27 HAP Renewal Term

Provided that the above conditions are met, and all the units are in compliance with HQS and continue to meet the B+ or better grade, the HAP contract may be renewed for an additional term of the same length as the initial term.